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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,747	02/15/2002	Christian Kropf	CU-2655 RJS	8969

7590

01/14/2004

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EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/936,747

Applicant(s)

KROPF ET AL.

Examin r

Marina Lamm

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-- The MAILING DATE of this communicati n appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-23 is/are allowed.
- 6) ☒ Claim(s) 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment is made of the amendment filed 9/8/03. Claims pending are 17-32. Claims 24-30 have been withdrawn from consideration as directed to non-elected invention. Claims 17, 22 and 31 have been amended.

Election/Restrictions

1. The restriction of Claims 24-30 is maintained for the reasons of the record. In response to the Applicant's argument it is noted that the originally presented claims are directed to a method of using a cosmetic composition comprising glucans, while Claims 23-30 are directed to a method of preparing glucans. The method of preparing glucans claimed in Claims 24-30 will not necessarily produce the glucans recited in the original claims.

Response to Arguments

2. Applicant's arguments, see paper #16, filed 9/8/03, with respect to Claims 17-23 have been fully considered and are persuasive. The 103(a) rejection of Claims 17-23 over Kelly in view of Donzis has been withdrawn.

3. Applicant's arguments, see paper #16, filed 9/8/03, with respect to the rejection(s) of claim(s) 31 and 32 under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Donzis have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the different interpretation of the previously applied reference.

Allowable Subject Matter

4. Claims 17-23 are allowed.

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5. The following is a statement of reasons for the indication of allowable subject matter:

The claims are allowable over the cited prior art because the prior art does not teach, disclose nor make obvious the claimed method for improved glucan resorption in skin or hair comprising applying to the skin or hair a cosmetic composition comprising nanoparticulate water-soluble β -(1,3)-glucans, which have intact β -(1,3) side chains and are free from repetitive β -(1,6) linkages and have particle diameters of about 10 to 300 nm. The closest available prior art (Engstad et al. WO 95/30022) teaches water-soluble β -(1,3)-glucan particles but fails to teach, disclose or suggest applying the glucans to the skin or hair in a cosmetic composition as required by the instant claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Engstad et al. (WO 95/30022).

Engstad et al. teach compositions containing water-soluble β -(1,3)-glucans in the form of “fine, dry powder”. See Examples, in particular, Example 6; Claim 10. The recitation of “fine powder” encompasses the claimed particle size of 10 to 300 nm.

Thus, Engstad et al. teach each and every limitation of Claims 31 and 32.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml
1/11/04


THURMAN K. PAGE
SUPERVISOR, PATENT EXAMINER
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